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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,164

11/17/2003

Richard Watson

VAC.785A.US

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7590

01/29/2008

KINETIC CONCEPTS, INC.

ATTN: LEGAL DEPARTMENT INTELLECTUAL PROPERTY

P.O. BOX 659508

SAN ANTONIO, TX 78265

EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

01/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/715,164	Applicant(s) WATSON, RICHARD	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23 and 25-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-23 and 25-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02 November 2007 has been entered.

Claim Objections

2. Claim 41 objected to because of the following informalities:

Claim 41 recites the limitation "incision" the second to the last line. This appears to be in error.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference

claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 21-23 and 25-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/200,837. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '837 application claims every material limitation of the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 21-23 and 25-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of copending

Application No. 11/004,586. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '586 application claims every material limitation of the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 21-23 and 25-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-62 and 64-84 of copending Application No. 10/818,468. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '468 application claims every material limitation of the instant invention..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 21-23, 25, 26, 29-34 and 37-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt *et al.* (GB 2 307 180 A; hereinafter: "Hunt") in view of Maher *et al.* (US

5,549,585 A; hereinafter: "Maher"), Aldecoa *et al.* (US 4,996,128; hereinafter: "Aldecoa"), and Ohira *et al.* (US 5,945,004 A; hereinafter "Ohira").

8. Regarding claims 21, and 41-44, Hunt teaches a personally portable vacuum desiccator (210) for collecting and storing liquid-exudate comprising:

a cartridge (100) having an interior chamber, inlet and outlet ports (32, 33);

a vacuum pump member (6) in gas/liquid communication (103) with the outlet port (33) of the chamber;

a motor (6A) operably connected to said vacuum pump (6); and

a tube (106) having a first end in fluid communication the inlet port (32)(100)(see figures 1, 3A and 4, *infra*).

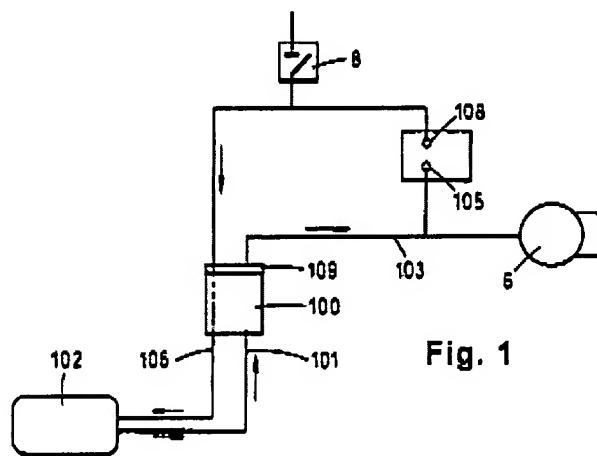
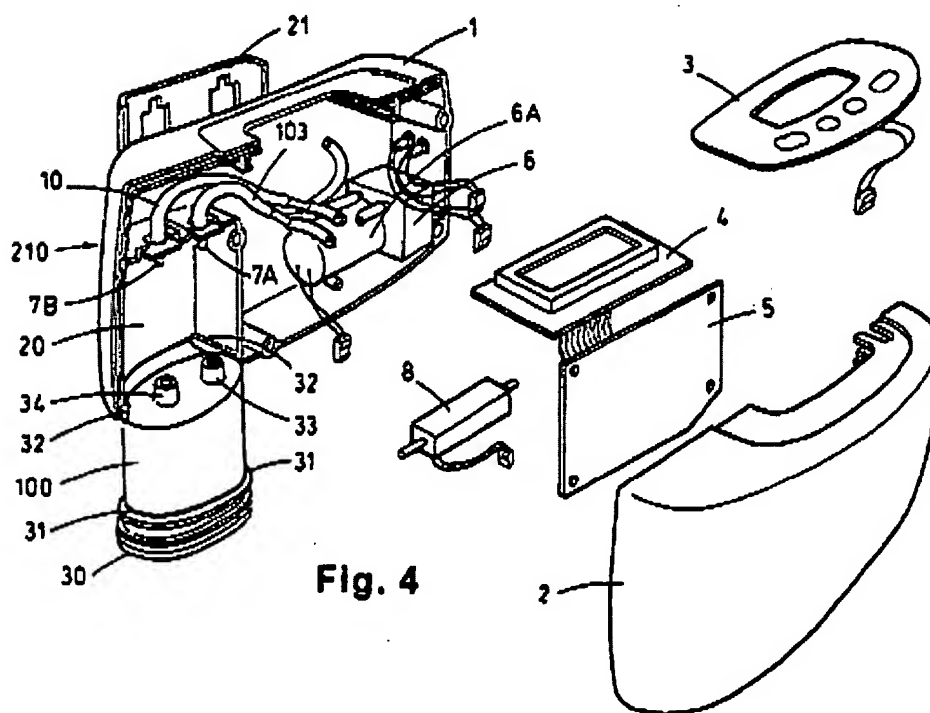
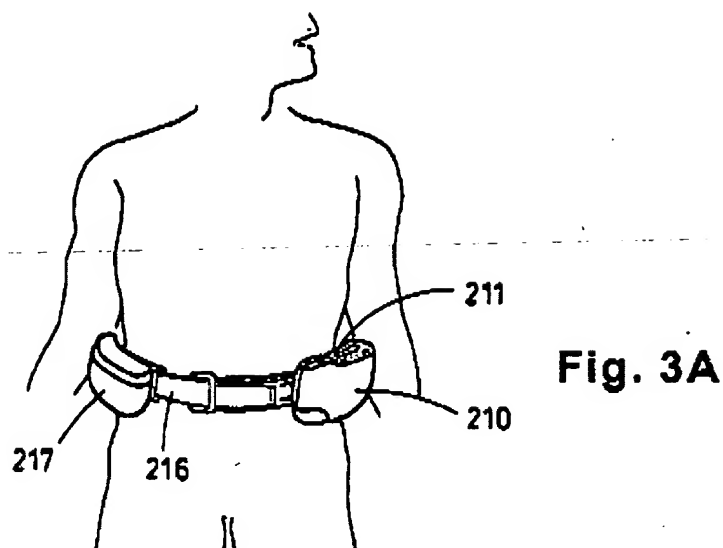


Fig. 1



Hunt thus teaches the claimed invention except for the trapping agent in the chamber, the planar battery shape and the unidirectional inlet port.

Maier teaches a bodily fluid collect receptacle (20) to which an absorbent gelling treatment is added to the interior thereof to solidify liquid exudates. This avoids hazards associated with spillage (abstract)(see fig. 5, infra).

Ohira teaches a one-way check valve in entrance port (22). This prevents unwanted reverse flow of liquid out of the container.

Regarding the functional limitations of the claims, apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114.

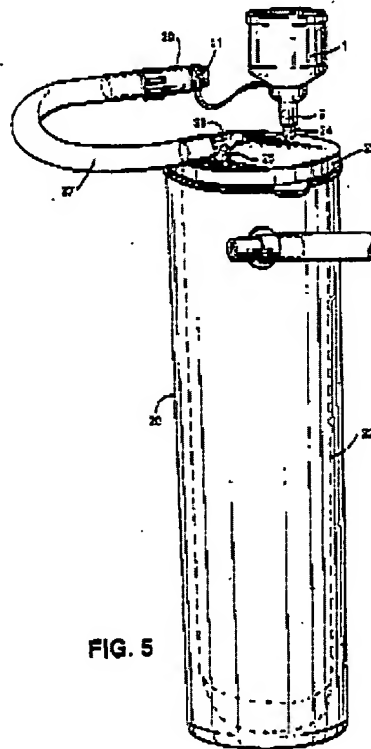


FIG. 5

Aldecoa teaches a slim planar battery (20) that is shaped for insertion into compact personal electronic devices (abstract)(see fig. 1, infra).

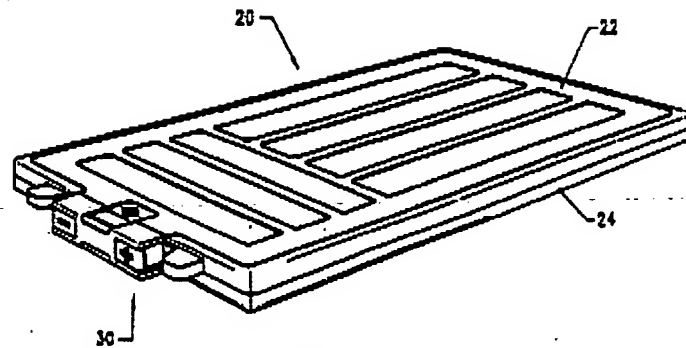
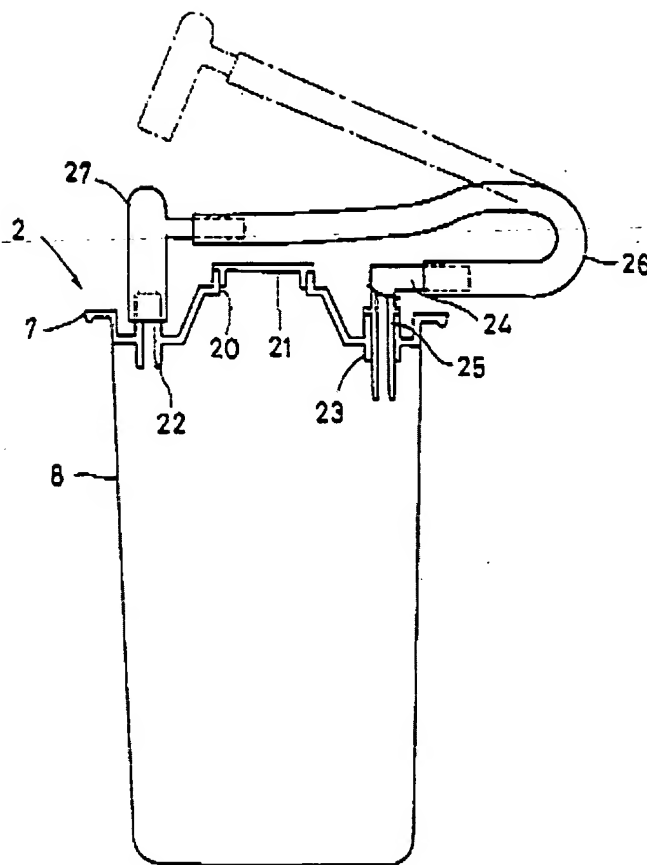


FIG. 1

Ohira teaches a one-way check valve in entrance port (22). This prevents unwanted reverse flow of liquid out of the container (col. 13, lines 42-49)(see fig. 2, infra).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the absorbent additive of Maher to the canister of Hunt in order to resist sloshing or spillage. It would have been obvious to further select the compact battery design of Aldecoa for its portability and to add the check valve of Ohira in order to prevent unwanted backflow of liquid.

Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. § 103(a).

Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007)(citing *KSR v. Teleflex*, 127 S.Ct.

1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly, Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent persuasive evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. § 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007)(citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396). Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. § 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

9. Regarding claim 29, Hunt teaches a gas flow channel (8).
10. Regarding claims 37 and 45, Hunt teaches a filter (109) located at the outlet port.
11. Regarding claims 22 and 30, Maher teaches a trapping agent that is an absorbent (col. 2, lines 19-27).
12. Regarding claims 23 and 31, Hunt teaches a tube (101) comprising a single passage flow path (see fig. 1, *supra*).
13. Regarding claim 32, Maher teaches a trapping agent disposed in a removable cartridge (1).
14. Regarding claims 25 and 33, Hunt teaches a control circuit (105) which controls the motor (6A) and pump (6)(col. 6, lines 6-11).

15. Regarding claims 26 and 34, Hunt teaches a pressure sensor (105).

16. Claims 27 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt, Maher, Aldecoa and Ohira in view of Lichtenstein (US 4,464,172).

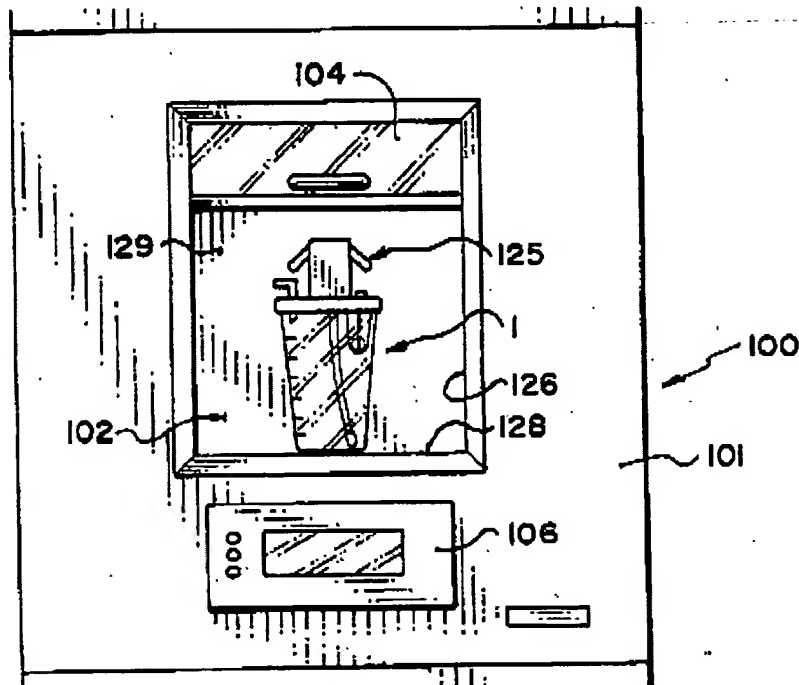
Hunt, Maher, Aldecoa and Ohira do not teach an I/O unit.

Lichtenstein teaches an automated medical care system that employs a pressure sensor (PS2) and an I/O circuit (101). At the time of the invention, it would have been obvious to one of ordinary skill in the art to add these elements to the device of Hunt, Maher, Aldecoa and Ohira in order to automate its functions. See *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.). MPEP § 2144.04 (III).

17. Claims 28 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunt, Maher and Aldecoa in view of Walker (US 5,741,237 A).

Hunt, Maher, Aldecoa and Walker fail to claim a limitation where the chamber is transparent. Walker teaches that it is known in the art to use transparent canisters (1) for containing such material in order to visually inspect its content without opening the device (see fig. 2, *infra*).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the transparent feature of Walker to the device of Hunt, Maher, Aldecoa and Ohira in order to allow such a person to visibly see the interior of the device.



Response to Arguments

18. Applicant's arguments with respect to claims 21-23 and 25-47 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

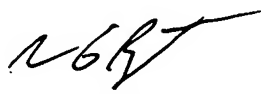
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Art Unit: 3761

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In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
22 January 2008

TATYANA ZALUKAEVA
SUPERVISOR/PRIMARY EXAMINER
